

Bensie Mfg. Co. and New York Imperial Foundations, Inc. and Commonwealth American Foundations, Inc. and Foundyn, Inc. and International Ladies' Garment Workers Union, Local 600, AFL-CIO and International Ladies' Garment Workers Union, AFL-CIO. Case 24-CA-4597

May 24, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER

Upon a charge filed on November 5, 1981, and amended charges filed on December 4 and December 22, 1981, by International Ladies' Garment Workers Union, Local 600, AFL-CIO, herein called the Union, and International Ladies' Garment Workers Union, AFL-CIO, herein called the International Union, and duly served on Bensie Mfg. Co., New York Imperial Foundations, Inc., Commonwealth American Foundations, Inc., and Foundyn, Inc., herein called, respectively, Respondent Bensie, Respondent New York Imperial, Respondent Commonwealth, and Respondent Foundyn, and also referred to collectively as Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 24, issued a complaint on December 29, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On March 2, 1982, the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on March 8, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless an answer was filed to the complaint within 10 days from the service thereof "all of the allegations of the complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, the Regional Director for Region 24, pursuant to Section 102.22 of the Board's Rules and Regulations, voluntarily extended the time for Respondent to file an answer, and warned Respondent in writing that unless an answer was filed by January 28, 1982, a motion would be made before the Board for entry of an order based on the undenied allegations of the complaint. Respondent has failed to file an answer to the complaint or to respond to the Notice To Show Cause. Thereafter, on March 2, 1982, no answer having been filed, counsel for the General Counsel filed the instant Motion for Summary Judgment.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true and, accordingly, we grant the General Counsel's Motion for Summary Judgment.

Upon the entire record in this proceeding, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent Bensie, a wholly owned subsidiary of Respondent Commonwealth, is a Delaware corporation which, at all times material herein, has maintained an office and place of business at Road

693, Km. 7.1, in Dorado, Puerto Rico, herein called the Puerto Rico plant, where it is, and has been at all times material herein, engaged in the sewing of brassieres, ladies' garments, and related products.

Respondent Commonwealth, a Delaware corporation, has maintained an office and place of business at Route 46 in Pine Brook, New Jersey, and at 2860 Route 10 in Morris Plains, New Jersey, where it is, and has been at all times material herein, engaged in the sale and distribution of brassieres, ladies' garments, and related products.

Respondent New York Imperial, a New York corporation and a wholly owned subsidiary of Respondent Foundyn, and Respondent Foundyn, a New Jersey corporation, have maintained an office and place of business at 67-34 Street, Brooklyn, New York, and at 2860 Route 10, Morris Plains, New Jersey, where they are, and have been at all times material herein, engaged in the cutting, sale, and distribution of brassieres, ladies' garments, and related products.

At all times material herein, Respondent Bensie has been a member of the Puerto Rican Corset and Brassiere Association, whose constituents own, maintain, or operate plants in Puerto Rico for the manufacture of corsets, brassieres, and related products. During the past year members of the Association, including Respondent Bensie, purchased goods and materials valued in excess of \$50,000 directly from sources outside Puerto Rico and, during the same period, sold, manufactured, or finished goods exceeding \$50,000 in value which were shipped directly to points outside Puerto Rico. Respondent Bensie is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

In addition, we find that, at all times material herein, Respondent Bensie, Respondent New York Imperial, Respondent Commonwealth, and Respondent Foundyn have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; that these corporations have formulated and administered a common labor policy affecting employees of said operations; that they have shared common premises and facilities; that they have provided services for and made sales to each other; that they have interchanged personnel with each other; and that they have held themselves out to the public as a single integrated business enterprise. Accordingly, we find that Respondent Bensie, Respondent New York Imperial, Respondent Commonwealth, and Respondent Foundyn constitute a single employer within the meaning of the Act and that, as a single

employer, Respondent is an employer engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

International Ladies' Garment Workers Union, Local 600, AFL-CIO, and International Ladies' Garment Workers Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Unit*

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All workers employed by the respective members of the Association in connection with any and all operations in the manufacture of garments produced in any shops located in Puerto Rico by said Association members, including cutters, clickers, spreaders, operators, shipping employees, packers, boxers, folders, cleaners, examiners and floor girls, and also including maintenance employees, machinists, mechanics, assistant mechanics, drivers, porters, and gardeners, but excluding therefrom the clerical and office force, watchmen, designers, executives, supervisors (as defined in the Act), foremen, foreladies, and assistant foremen and foreladies, professionals, administrative and executive employees.

At all times material herein, since at least 1979, the Union has been the collective-bargaining representative of the employees in the above-described unit within the meaning of Section 9(a) of the Act. Respondent has been party to a collective-bargaining agreement with the Union, effective from January 1, 1980, to January 31, 1983.

B. *The Refusal To Bargain*

On or about September 3, 1981, Respondent closed its Puerto Rico plant, terminating the employment of all its employees at said plant, without prior notice to the Union and without giving the Union the opportunity to bargain over the effects of said closing. By such action, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative actions designed to effectuate the policies of the Act. We shall order Respondent upon request to bargain with the Union concerning the effects of the plant closing and to pay the terminated employees amounts at the rate of their normal wages when last in Respondent's employ from 5 days after the date of this Decision until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the layoffs; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount each would have earned as wages from the time of their termination to the time each secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs first; provided, however, in no event shall this sum be less than that such employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ.¹ Backpay shall be computed in the manner set forth in *F. W. Woolworth Company*,² and *Florida Steel Corporation*.³

Finally, we shall order that, in lieu of posting, copies of the notice to employees be mailed to

those employees on Respondent's payroll on the date final notice was given of the plant's closure.⁴ Said notices shall be in both Spanish and English.⁵

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Bensie Mfg. Co., New York Imperial Foundations, Inc., Commonwealth American Foundations, Inc., and Foundyn, Inc., constitute a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Ladies' Garment Workers Union, Local 600, AFL-CIO, and International Ladies' Garment Workers Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. All workers employed by the respective members of the Association in connection with any and all operations in the manufacture of garments produced in any shops located in Puerto Rico by said Association members, including cutters, clickers, spreaders, operators, shipping employees, packers, boxers, folders, cleaners, examiners and floor girls, and also including maintenance employees, machinists, mechanics, assistant mechanics, drivers, porters, and gardeners, but excluding therefrom the clerical and office force, watchmen, designers, executives, supervisors (as defined in the Act), foremen, foreladies, and assistant foremen and foreladies, professionals, administrative and executive employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since at least 1979, International Ladies' Garment Workers Union, Local 600, AFL-CIO, has been the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing to notify the above-named Union in advance of the closing of its Puerto Rico plant on or about September 3, 1981, and by failing to give the above-named Union an opportunity to bargain over the effects of said closing, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By the aforesaid failure to notify and give an opportunity to bargain, Respondent has interfered with, restraining, and coerced, and is interfering with, restraining, and coercing, employees in the

¹ *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968). Despite his partial dissent in *Transmarine*, Member Jenkins notes that the remedy there has been accepted by the courts and the Board and, since some type of remedy for the misconduct is needed, he is therefore willing to join in the Decision here. *Uncle John's Pancake House*, 232 NLRB 438, 440, fn. 7 (1977).

² 90 NLRB 289 (1950).

³ 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Member Jenkins would award interest on backpay in accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

⁴ See, e.g., *Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, a General Partnership d/b/a Wheelco Co.*, 260 NLRB 867 (1982); *Cerro CATV Devices, Inc.*, 237 NLRB 1153 (1978).

⁵ See, e.g., *Hollander Home Fashion Corp.*, 255 NLRB 1098 (1981).

exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bensie Mfg. Co., Dorado, Puerto Rico, New York Imperial Foundations, Inc., New York, New York, Commonwealth American Foundations, Inc., Pine Brook and Morris Plains, New Jersey, and Foundyn, Inc., New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to notify and give International Ladies' Garment Workers Union, Local 600, AFL-CIO, an opportunity to bargain over the effects of the closing of its Puerto Rico plant.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively and in good faith with International Ladies' Garment Workers Union, Local 600, AFL-CIO, as the exclusive representative of its employees in the below-described bargaining unit concerning the effects of the closing of its Puerto Rico plant. The appropriate unit is:

All workers employed by the respective members of the Association in connection with any and all operations in the manufacture of garments produced in any shops located in Puerto Rico by said Association members, including cutters, clickers, spreaders, operators, shipping employees, packers, boxers, folders, cleaners, examiners and floor girls, and also including maintenance employees, machinists, mechanics, assistant mechanics, drivers, porters, and gardeners, but excluding therefrom the clerical and office force, watchmen, designers, executives, supervisors (as defined in the Act), foremen, foreladies, and assistant foremen and foreladies, professionals, administrative and executive employees.

(b) Pay those employees terminated as a result of the closing of its Puerto Rico plant their normal wages in the manner and for the period set forth in

the section of this Decision entitled "The Remedy."

(c) Mail a copy of the attached notice marked "Appendix"⁶ to each employee who was on its Dorado, Puerto Rico, plant payroll on the date final notice was given of the plant's closure. Such notice is to be mailed to the last known address of each employee. Copies of said notice in both Spanish and English,⁷ on forms provided by the Regional Director for Region 24, after being duly signed by Respondent's representative, shall be mailed by Respondent immediately upon receipt thereof.

(d) Notify the Regional Director for Region 24, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁷ The Regional Director, as part of the compliance process, shall be responsible for having the attached notice translated into Spanish prior to mailing.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to notify and give International Ladies' Garment Workers Union, Local 600, AFL-CIO, an opportunity to bargain over the effects of the closing of our Puerto Rico plant.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain collectively and in good faith with International Ladies' Garment Workers Unions, Local 600, AFL-CIO, as the exclusive representative of our employees in the below-described bargaining unit concerning the effects of the closing of our Puerto Rico plant. The appropriate unit is:

All workers employed by the respective members of the Association in connection with any and all operations in the manufacture of garments produced in any shops located in Puerto Rico by said Association members, including cutters, clickers, spreaders, operators, shipping employees, packers,

boxers, folders, cleaners, examiners and floor girls, and also including maintenance employees, machinists, mechanics, assistant mechanics, drivers, porters, and gardeners, but excluding therefrom the clerical and office force, watchmen, designers, executives, supervisors (as defined in the Act), foremen, foreladies, and assistant foremen and foreladies, professional, administrative and executive employees.

WE WILL pay those employees terminated as a result of the closing of our Puerto Rico plant their normal wages in the manner and for the period set forth in the Board's Decision and Order.

BENSIE MFG. CO. AND NEW YORK
IMPERIAL FOUNDATIONS, INC. AND
COMMONWEALTH AMERICAN FOUNDATIONS, INC. AND FOUNDRY, INC.